IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 257 of 1990

Shri Balappa Channappa Terdal — Petitioner

Vs.

1. Shri Sidhappa Vyankappa Kaligudi
since deceased through LR
1A. Vyankappa Sidappa Kaligudi — Respondent

With

Writ Petition No.3988 of 1991

And

Writ Petition No.4847 of 1991

Narayanrao Bagwanrao Dafale — Petitioner

Vs.

Sidhappa Vyankappa Kaligudi
through LR:
1(a) Bangarappa Sidhappa Kaligudi
since deceased through LR
1(b) Vyankappa Sidhappa Kaligudi
& ors. — Respondents

Mr.S.M.Kamble for petitioner in W.P.257 of 1990 and for Resp.No.2 in W.P.Nos.3988 and 4847 of 1991.

Mr.H.D.Gole with Mr.P.S.Gole for petitioner in W.P. Nos.3988 and 4847 of 1991.

Mr.Rakesh Kumar Singh for Resp.No.1A in W.P.257/90, and for Resp.No.1(b) in W.P.Nos.3988 & 4847 of 1991.

CORAM: B.H.MARLAPALLE,J.

Reserved on : August 11, 2006

Pronounced on: August 21, 2006.

JUDGMENT:

1. Bhagwantrao Dafale, resident of Umarani, Taluka Jath, Dist. Sangli had four sons by names, Dattajirao, Shankarrao, Madhavrao and Annasaheb. The three sons i.e. Shankarrao, Madhavrao and Annasaheb died issueless whereas Dattajirao had a son by name Bhagwantrao who was married to Sushilabai. Madhavrao died in the year 1940 and was survived by his widow Lalabai. The agricultural land admeasuring about 20 acres located in Survey No.69 (Gat No.108) of village Umarani (Khojanwadi) was under the cultivation of late Madhavrao and on his demise in the year 1940, his widow Smt.Lalabai became the landlady. The Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 was brought into force with effect from 1/8/1955 and consequently the said land under the cultivation of Lalabai was taken over by the State Government. However, Smt. Lalabai paid

the occupancy price within the stipulated period and the land was regranted to her sometimes in August 1963. The landlady died on 3/4/1969 and was survived by Smt. Yashodabai, the widow of Shankarrao, Bhagwantrao and Annasaheb.

2. Shri Venkappa Kaligudi was the tenant on the suit land as on 1/4/1957 (hereinafter referred to as the respondent no.1). The ALT and Additional Tahsildar, Jath during the life time of Smt.Lalabai had initiated proceedings suo motu under Section 32G of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Tenancy Act" for short) and the said proceedings were dropped as the landlady was a widow. On the demise of Smt.Lalabai in April 1969 the ALT and Addl. Tahsildar, Jath started fresh suo motu proceedings under Section 32G and the Respondent No.1 was shown as the tenant. He appeared before the ALT on 16/6/1971 and his statement was recorded. The ALT gave a decision sometimes in 1971 itself holding that there was no occasion to start proceedings under Section 32F(2) as the tenant had not complied with the provisions of Section 32F(1A) of the Tenancy Act.

3. The petitioner in Writ petition No.257 of 1990

claimed that he was cultivating half of the suit land while the remaining half was being cultivated by the respondent no.1 as a tenant on the entire land (hereinafter referred to as the petitioner). He further claimed that by an agreement dated 18/6/1971 entered between him and the respondent no.1 an amount of Rs.6000/- was paid to the respondent no.1 by way of purchase price of the half portion and this transaction was against the proposed purchase of the entire suit land by the respondent no.1. In the said agreement the respondent no.1 also confirmed that the petitioner was in cultivation of half of the land whereas on the remaining half the respondent no.1 was in cultivation and he was shown as the tenant in respect of the entire suit land. The petitioner further claimed that the Tahsildar, Jath had entered his name in the Revenue Record by his order dated 1/10/1983 and retrospectively for the year 1971-72 onwards. On these contentions the petitioner approached the ALT, Jath to initiate proceedings under Section 32G of the Tenancy Act for declaring his ownership on half of the suit land. The notices were issued to all the parties viz. the present respondent no.1 as well as the landlords. When this application was pending Smt.Yashodabai died in 1984

and Annasaheb died in 1980 and was survived by his widow Hirabai. The ALT by his order dated 12/5/1986 allowed the proceedings in favour of the petitioner and determined the purchase price. The petitioner was declared as the owner in respect of half of the suit land and on payment of the purchase price the ownership certificate came to be issued in his favour.

4. The respondent no.1 approached the Sub Divisional Officer, Miraj Sub Division and filed two appeals. Tenancy Appeal No.19 of 1985 was preferred against the order of Tahsildar deciding 32G proceedings against him in the year 1971. Whereas Appeal No.16 of 1986 was preferred against the order dated 12/5/1986 passed in favour of the petitioner. Both these appeals were contested and Appeal No.19 of 1985 was opposed by the landlords on the point of limitation as well as on the ground that the respondent no.1-tenant had not issued the notice as required under Section 32F(1A) within the stipulated period of two years from the demise of Smt.Lalabai and, therefore, he was not entitled to purchase the remaining half of the suit land. The SDO was pleased to allow both the appeals on 20/8/1986. The orders

of the ALT and Addl. Tahsildar were set aside and the respondent no.1 was declared as the owner in respect of the entire land. The purchase price was also directed to be fixed. The landlords, therefore, filed Revision Application Nos.36 and 80 of 1987 and the petitioner filed Revision Application No.29 of 1987. By a common judgment and order dated 27/9/1990 the learned Member of the Maharashtra Revenue Tribunal was pleased to dismiss the revision applications. These three petitions have been filed against the common order passed by the SDO allowing Appeal No.19 of 1985 and Appeal No.16 of 1986 and the said decision being confirmed by the MRT.

5. It will be necessary to decide the challenge raised by the petitioner in Writ Petition No.257 of 1990 and by the landlords in Writ Petition Nos.3988 and 4847 of 1991, separately which implies that the challenge to the order passed by the SDO in Appeal No.19 of 1985 and Appeal No.16 of 1986 will have to be decided separately.

APPEAL NO.19 OF 1985

6. Section 32F deals with the right of the tenant to purchase the agricultural land under his tenancy. As per sub-section (1)(a) of Section 32F where the landlord is a widow, the tenant shall have a right to purchase the land under tenancy under Section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31 of the Tenancy Act. Whereas sub-section (1A) of Section 32F states that a tenant desirous of exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section. It is thus necessary that where the landlady is a widow, the tenant shall have the right to purchase the land within two years from the date of her demise and he is required to give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner and within the period of two years from the date of demise. In the instant case Smt.Lalabai died on 3/4/1969. In his statement recorded on 16/6/1971 the respondent no.1-tenant accepted that he did not give any such intimation to the landlord thereby conveying his desire to purchase the land by exercising the right

conferred on him under sub-section (1) of Section 32F, but he further expressed his desire before the ALT in the very same statement to purchase the land. The SDO as well as the MRT have accepted this statement as being sufficient compliance of the requirements of sub-section (1)(a) read with sub-section (1A) of Section 32F and allowed the Tenancy Appeal No.19 of 1985 on that foundation. It is, therefore, necessary to examine whether this ground is sustainable in law. A Division Bench of this Court in the case of Bapu Dnyanu Patil Vs. Sadashiv Ramchandra Joshi **[1969 Mh.L.J. 789]** has dealt with the interpretations of Section 32F dealing with the tenant's right to purchase the agricultural land in the following words:

> "15. It is clear under section 32F (1) that where a landlord is under a disability he is entitled to exercise his right of terminating the tenancy within a year from the removal of the disability or in the case of a widow, from the date of secession of her interest by the successors, and within a further year thereafter a tenant must exercise his option of purchasing the land in the manner provided

by sub-section (1A) thereof. The right to terminate the tenancy as intended by section 31(3) of the Act is to give notice and file an application under section 29 for recovery of possession within a year. The language of these provisions is such that it is not possible to hold that in a case where the landlord has in fact filed an application for recovery of possession after terminating the tenancy, the right for the exercise of the option is postponed until after the decision of such an application. The language in section 31 is not susceptible of that construction and it is not possible to accede to any such contention. The proviso, therefore, which is a part of section 32 which postpones the deemed date in respect of an ordinary tenant who is himself not under a disability and whose landlord also is not under a disability cannot have application to such a case as is sought to be contended in some of these cases.

16. In the case of a tenant under disability section 32F(1)(b) applies and

having regard to the provisions of section 32P it is impossible to hold that the provisions of giving notice and the exercise of right within a period provided therein are merely directory and not mandatory. In case of disability on the part of a tenant, the right must be exercised on the removal of the disability and in the case of a widow by the successors on her ceasing to have interest within one year in the manner provided by sub-section (1)(b) of section 32F of the Act. It is not, therefore, possible to accede to the contention that the provisions should be read as directory and not mandatory."

. In the case of Appa Narsappa Magdum since deceased through LRs. v. Akubai Ganpathi Nimbalkar and ors. **[AIR 1999 SC 1963]** the Apex Court also had an occasion to interpret the provisions of Section 32F of the Tenancy Act. Their Lordships stated thus:

"3. ... Section 32-F provides that in the case where the landlord is a widow, the tenants shall have the right to purchase such

land under Section 32 within one year from the expiry of the period during which such a landlord is entitled to terminate the tenancy under Section 31. The landlady died on 8/12/1965. Her successors-in-interest could have filed an application for termination of the tenancy within one year from 8.12.1965 as her interest in the land ceased to exist from that date. Therefore, the tenant ought to have exercised his right under Section 32-F before 8/12/1966. Admittedly, the appellant did not comply with this requirement of Section 32-F. The intimation contemplated by Section 32-F(1)(a) was given by him long after one year had passed. It was given for the first time on 15.6.1968. It was after his right to purchase the land had come to an end."

7. In the instant case admittedly the Respondent no.1 did not give intimation under Section 32F (1A) so as to exercise his right under sub-section (1)(a) of Section 32F within the period of two years from 3/4/1969 i.e. on or before 3/4/1971. He expressed his desire/willingness to purchase the suit land for

the first time in his statement recorded on 16/6/1971 and this statement cannot be accepted to be a notice/intimation given to the landlords by the tenant i.e. respondent no.1 and in any case it was not on or before 3/4/1971. Thus the SDO as well as the MRT fell in gross errors in holding that the tenant had complied with the requirement of Section 32F(1A) of the Tenancy Act and he was entitled to purchase the land under section 32 of the Tenancy Act.

8. In addition Appeal No.19 of 1985 was filed after 14 years from the decision rendered by the Tahsildar closing the proceedings under Section 32F on the ground that the respondent no.1-tenant had not given the intimation as mandated under Section 32F(1A) of the Tenancy Act. This delay of 14 years was not considered by the SDO on the ground that the order passed by the Tahsildar and impugned in the said appeal did not bear any date. However, the MRT noted from the record that the said order was intimated on or about 2/7/1971. It is also required to be noted that the respondent no.1 had appeared in the said proceedings and his statement was recorded on 16/6/1971. This itself indicated that he was

aware that suo motu proceedings were initiated by the ALT under Section 32G of the Tenancy Act and for deciding his right to purchase the suit land. Under these circumstances, it could not have been held by the SDO as well as the MRT that Appeal No.19 of 1985 was filed within time by the respondent no.1- tenant. Thus on both the counts the impugned orders passed by the SDO as well as the MRT allowing Appeal No.19 of 1985 are unsustainable in law and the challenge to the same must, therefore, succeed.

APPEAL NO.16 OF 1986

9. The R. & P. available shows that pursuant to the order passed by the Tahsildar on 1/10/1983 the name of the petitioner came to be entered in the Revenue Record in respect of half of the suit land for the agricultural year 1971-72 onwards and his name continuously appeared thereafter as the cultivator for the said portion of the land. The agreement signed between the petitioner and the respondent no.1 on 18/6/1971 has not been disputed. The landlords appeared in the enquiry proceedings initiated by the ALT and their statements were

recorded i.e. the statements of Mrs.Vijaymala Bhagwantrao Ingole, daughter of Bhagwantrao - Sushilabai Bhagwantrao Dafale, Narayanrao Bhagwantrao Dafale and Hirabai Annasaheb Dafale and all of them clearly stated before the ALT that the petitioner was in cultivation of half of the land right from 1971-72 and he had also dug a well in the portion of land under his cultivation. These statements have been discarded by the SDO as well as the MRT solely on the ground that they were not recorded on oath and there was no cross-examination. It is surprising to note that the statement of respondent no.1 recorded on 16/6/1971 before the ALT in the same manner has been accepted by the ALT as well as the MRT whereas the statements of the landlords have been discarded. The record also shows that the petitioner on a notice received from the ALT appeared before him and submitted an application on 29/5/1984 stating that half of the suit land was in his possession right from 1971-72 onwards and he was desirous of purchasing the same. The SDO and the MRT noted that the respondent no.1-tenant had no intimation of these proceedings which culminated in an order in favour of the petitioner. The record shows that these findings are grossly erroneous. It is seen from the record

that the respondent no.1 was issued a notice which he received and he appeared before the ALT on 30/5/1983, submitted a Vakilpatra on 20/5/1983. The original tenant Sidhappa Vyankappa executed a power of attorney in favour of his son Shri Vyankappa on 5/4/1983 and the same was placed on record but respondent no.1 thereafter appeared before the ALT on 3/6/1983, 8/7/1983, 12/8/1983, changed his Advocate on 31/8/1983 and asked for adjournments on 31/8/1983, 11/10/1983, 13/1/1984 and so on. Thus the order dated 12/5/1986 which was challenged in Appeal No.16 of 1986 before the SDO was not an ex-parte order so far as the respondent no.1 is concerned. The landlords on the other hand had accepted the status of the petitioner and their statements were discarded by both the authorities below erroneously. They have supported the challenge of the petitioner to the order passed by the SDO in Appeal No.16/1986, before this Court as well. Though the respondent no.1 appeared and sought adjournments from time to time before the ALT, he did not file any defence statement opposing the application of the petitioner and, therefore, there was no reason for the SDO as well as the MRT to interfere with the order dated 12/5/1986 passed in favour of the petitioner by the ALT and the

Addl. Tahsildar. It also must be noted that certificate under Section 32M of the Tenancy Act has been issued in favour of the petitioner on 2/6/1986 and this is a final conclusion in respect of his right as a purchaser of half of the suit land. In the premises the SDO fell in gross errors in allowing Appeal No.16 of 1986 and the MRT failed in exercising its revisionary powers to correct the perverse order passed by the SDO.

10. For the reasons stated hereinabove all the three petitions succeed and the same are hereby allowed. The impugned orders passed by the MRT dated 21/9/1988 in Revision Application No.29 of 1987 and dated 27/9/1990 in Revision Application Nos.36 and 80 of 1987 and the order dated 20/8/1986 passed by the SDO are hereby quashed and set aside and consequently Appeal No.19 of 1985 and Appeal No.16 of 1986 are hereby dismissed.

11. Rule made absolute accordingly with no order as to costs. Let it be clarified that the order dismissing Appeal No.19 of 1985 is not an order of eviction of the Respondent No.1 and he will continue to cultivate half of the land as a tenant distinct

and separate from the remaining half, the ownership of which has been confirmed on the petitioner.

(B.H.MARLAPALLE,J.)